

The Impact of Short Sentences on Mothers

Lucy Baldwin and Rona Epstein write on mothers in custody UK

The Prison Reform Trust suggests 20,000 children a year are affected by maternal incarceration (up from 6,000 in 1995): only five *per cent* of those children remain in their own homes, only nine *per cent* are cared for by their fathers and 14 *per cent* of these children are placed in the care of the Local Authority. What happens to the remaining unaccounted for children and how they fare requires a great deal more discussion and exploration. However what is known is that many are displaced and cared for by extended informal family networks – the majority of which were already facing multiple challenges in relation to poverty and disadvantage. We know that 66 *per cent* of women in prison are mothers of children under 18 – however, this figure is not an accurate reflection of the number of actual mothers and grandmothers in prison. Grandmothers have often been “invisible in both research and literature pertaining to women and imprisonment” and as such the devastation and disruption caused to often already vulnerable families when a grandmother (who may be a source of childcare as well as family support) goes to prison is underexplored and therefore something we wished to include in our forthcoming research on women and short sentences.

The imprisonment of mothers (and grandmothers) has been described as having “wreaked havoc on family stability and children’s well-being”. The multinational EU-funded study *Children of prisoners: interventions and mitigations to strengthen mental health* on the mental health of children of prisoners across four European countries found that a majority of children reported being negatively impacted by the imprisonment of a parent. This is not a new finding, it has been a “known” and accepted fact for over 30 years amongst academics, researcher’s, practitioners and women and children themselves that prison is both damaging and ineffective.

Prevalence and Sentencing Patterns

During a 12 month period, ending June 2014, some 9,204 women entered custody on remand or under sentence. Despite the fact that UK law states that prison can be used as a sanction only when the offence is “so serious” that neither a fine nor a non-custodial sentence can be imposed the vast majority of convicted women in prison (83 per cent) are serving a sentence



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for non-violent offences. The low level offending for which most women are incarcerated includes offences such as fraud, theft, non-payment of fines – and often council tax default, despite it being illegal to do so (unless as a “last resort”). The All Party Parliamentary Group (2015) in relation to custody found that 77 *per cent* of women were sentenced to less than 12 months, 71 *per cent* less than six months and 52 *per cent* less than three months. Use of pre-trial remand for women is particularly high – with 40 *per cent* of women entering prison in any 12 month period being unconvicted (3,754 women were remanded in the 12 months preceding June 2014). The Howard League suggest that 71 *per cent* of women remanded by magistrates’ courts and 41 *per cent* remanded by Crown Courts do not go on to receive a custodial sentence thus raising the question of the appropriateness of remand in custody in the first instance.

Internationally there are wide ranging differentials in relation to the sentencing of parents, particularly mothers – with some countries choosing to only very sparingly and reluctantly sentence mothers to custody eg, Norway, Denmark – some routinely allowing children to enter prison with their mother (and sometimes father) until the child is as old as six eg, Columbia, Turkey, Finland – some deferring a custodial sentence until a mother has finished breastfeeding or following a recent birth, eg, Iceland, China or until the child reaches the age of three eg, Spain, Venezuela. Indeed in Italy (and other countries) mothers with children up to the age of 10 are permitted in some circumstances to serve their sentence with their children at home or other alternative settings than prison.

Impact of Remand in Custody and Short Sentences

For many mothers and grandmothers the “impact” of custody has already been felt *via* the remand – many are forced further into poverty, debt, unemployment, homelessness and in addition may lose custody of their children. Baldwin recounts from her research the experience of one young mother who was sentenced a community order, following a three week remand period. A positive result perhaps, but even during the relatively short remand the woman was made homeless by her landlord and her son was taken into care. As a consequence, the young mother’s substance misuse spiralled into a downward cycle and she ultimately returned to prison and never regained custody of her son. This is not an isolated case – the continued use of both short sentences and remand in relation to mothers who commit less serious non-violent crime will result in the continued devastation to ever more families. Research tells us magistrates are often reluctant to remand on bail in relation to women due to a belief that women misusing substances (around 50 *per cent* of female offenders) lead lives that are “too chaotic” to facilitate compliance with bail conditions, or a belief that custody will facilitate access to support services otherwise unavailable to women and mothers or due to a lack of female residential bail hostels. All sentencers are required to adhere to “overarching sentencing principles” that ensure any custodial sentence or custodial remand is passed is both “just” and “proportionate”. We would ask: when a remand in custody from a minor public order offence and non-payment of a fine has the consequence of a mother losing her home and her child, a child losing its mother – how can this be deemed “just” or “proportionate”?

Aside from the psychological and emotional cost of maternal incarceration the financial cost of a basic prison space for a women in the UK falls around £56,500pa, the cost of taking one child into the care of the Local Authority falls between just under £40,000pa for a child without additional behavioural or emotional needs and up to £364,500pa for a child with multiple needs – this is notwithstanding the cost of re housing, supervision on licence (now a minimum of 12 months in the UK) and other rehabilitative services – as opposed to £1,360 – £2,800 for a holistic women’s centre based intervention or community order.

Why Does the Situation Prevail and What Are the Alternatives?

In light of overwhelming evidence to suggest that custody for mothers is best avoided wherever possible, particularly when as has been illustrated the “collateral damage” to mothers, children and their families can be just as devastating if the sentence is short as it can if the sentence is long – why do magistrates (and in the case of women it is generally magistrates) continue to sentence mothers to custody? Baldwin in *Mothering Justice* states simply “because they can” – suggesting that whilst ever the sentencing framework facilitates magistrates relative autonomy and discretion, then sentencing, as well as being inconsistent will lean towards the more punitive responses.

In her research *Mothers in prison: “The sentencing of mothers and the rights of the child”* Epstein found that none of the 75 sentencers in her study formally accounted for the rights and needs of the child or the potential impact of a custodial sentence on dependent children despite being required to do so – as *per* ECHR guidelines. Epstein essentially found that sentencers failed to undertake the required “balancing exercise” in relation to dependent children, additionally finding that sentencing decisions in relation to mothers, indeed to women *per se* were inconsistent. It would appear that the on-going failure to adhere to guidelines and to continue to sentence mothers to custody – despite this often resulting in the afore mentioned disproportionate and additional punishment of losing homes and children, goes essentially unchallenged because of the “autonomy” and “independence” of the judiciary.

In recognition of the “harm” caused by ineffective and devastating custodial sentencing on mothers and their children, together with a recognition that it is beneficial for society, morally, socially and economically the Scottish Justice Minister Michael Matheson has pledged a “whole system” change in relation to women, mothers and incarceration. Matheson has already demonstrated his commitment to progressive and informed change by halting plans to build a large women’s prison in Scotland, instead stating his intent to focus on smaller, more effective alternatives to custody. Obviously this has to be part of a wider initiative/agenda to address inequality and social justice across the board, but the intention is clear – change is beginning to take shape in Scotland and the rest of the UK must surely follow .

Baldwin has outlined specific proposals, which, if implemented, would “immediately and significantly” reduce the number of mothers sentenced to custody. These proposals include a mandatory requirement that in the case of mothers (or fathers) with dependent children (or indeed any defendant with dependent responsibility), that Sentencers are mandatorily required to request a pre-sentence report (PSR), additionally at this point a referral would be made to a *Guardian ad Litem* by the probation officer with a view to securing an independent report focussed on any needs or care provisions of the dependent child/ren. This would then be used to inform the court, much in the same way a psychiatric report would, thereby assisting the sentencer in undertaking the “balancing exercise”. For this Baldwin suggests a standard four-week period of adjournment to facilitate report and information gathering.

Obviously, this would delay proceedings and there could be some resistance on this basis. However, the delay and the assessment would facilitate proper investigation into what arrangements or referrals might need to be made for the children, and at the same time provide valuable evidence to assist the sentencer in making a truly informed – and more importantly balanced – sentencing decision (for which sentencers would be accountable). The delay would also allow the probation officer/PSR writer time to establish and consider alternatives to custody and conditions for a community order should the sentencer eventually be minded to consider a non-custodial option. (Obviously after establishing also that the offence was “so serious” as to warrant custody in the first instance.) Baldwin suggests this

process could easily be built into magistrates' training and sentencing frameworks and would be subject to monitoring with measures of accountability.

Baldwin further suggests that even where a custodial sentence is likely or warranted, this mandatory period of adjournment would facilitate planning and preparation for the care of dependents. Furthermore it would eradicate circumstances where mothers not expecting a custodial sentence, may have failed to prepare herself or her children for impending separation and left children in the informal care of friends or neighbours. The suggested proposals therefore, despite the additional delay and apparent immediate cost would surely be for the greater good of all parties involved: but especially the children.

A consequence of these reforms would be a reduction in the number of mothers entering custody, and given that over 66 *per cent* of women in custody are mothers of children under 18 this would in turn would return benefit financially, emotionally, and psychologically for the women, for their children and for society – both in the short and the longer term. Should these reforms be deemed “far reaching” “expensive” and incompatible with current proposals to provide “fast tracks” to disposal (arguably at the expense of proper consideration of the wider picture? Then the very least that should be commonplace are gender specific court sittings, with experienced and enlightened sentencers who appreciate the additional “harm” caused to women, children and society by often unnecessary, unjust and disproportionate

punishment that is the consequences of short sentences – particularly for lower level offences.

In our forthcoming research “*Short but not Sweet: A Study of the Imposition of Short Custodial Sentences on Women, and in particular, on Mothers*” we hope to provide further evidence to support the proposals above and perhaps generate additional proposals by shedding light on the lives and circumstances of women sentenced to short sentences, and in particular on their children and the wider family. Through our questionnaires we will hear the voices of the women themselves who have been in prison for short periods. We will learn what the experience was like for them, and the effects on their dependants. We hope to be able to make further informed proposals for positive change based on our research findings and ultimately seek change in relation to not only a reduction in the number of short custodial sentences imposed in order to benefit mothers and their children – but to significantly reduce the imposition of any custodial sentences on mothers.

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